

(2014) 05 JH CK 0065

In the Jharkhand High Court

Case No : Cr. Revision No. 331 of 2014 and I.A. No. 2696 of 2014

Arun Prasad, Sanjit Prasad @ Sanjit Kumar and Ajit Prasad @
Ajit Kumar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Penal Code, 1860 (IPC) — Section 307, 328, 34, 341, 448

Citation : (2014) 05 JH CK 0065

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Ashutosh Kumar Singh, Chandrajit Mukherjee, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners, learned A.P.P. for the State as also learned counsel for the informant.

2. The petitioners are aggrieved by the order dated 20.3.2014 passed by learned A.J.C.-IV, Ranchi, in S.T. No. 69 of 2014, whereby the application filed by the petitioners for discharge u/s 227 of the Cr. P.C., has been rejected by the Court below, also giving a finding that in the facts of this case, the charges are required to be framed u/s 307 of the Indian Penal Code as well.

3. The facts of this case lie in a short compass. The petitioners have been made accused in Lower Bazar P.S. Case No. 54 of 2002, corresponding to G.R. No. 1279 of 2002, for the offences under Sections 448, 328, 341/34 of the Indian Penal Code. There is direct allegation against the petitioners to have poisoned the informant, whose fardbeyan was recorded on 8.5.2002 in the Female Ward, Bed No. 4 in Sadar Hospital, Ranchi, by the A.S.I. of Lower Bazar Police Station, on the basis of which, the police case was instituted and investigation was taken up. It appears that after investigation, the police submitted the final form in the

Court below, which however, was not accepted by the Court below and the cognizance was taken against the petitioners.

4. The petitioners challenged the said order taking cognizance, before this Court in Cr. M.P. No. 1265 of 2004, which was finally dismissed by order dated 16.7.2008, finding that when the investigation was finally to conclude, the superior officer, Deputy Superintendent of Police, Ranchi, in his supervision note directed the I.O., to submit the final form, relying only upon the alibi taken by the petitioners. When the matter was pending for acceptance of the final form, protest petition was preferred by the informant before the learned Chief Judicial Magistrate and after going through the record, it was held that on the basis of the materials collected during investigation, the I.O. and officer-in-charge of the police station, had concluded that the offences under Sections 328, 341, 448 and 34 of the Indian Penal Code were made out against the petitioners, but being influenced by the supervision note by the superior officer, the final form was submitted in the Court, which was not accepted by the Court below. It appears that thereafter the case was committed to the Court of Session, where the petitioners again filed their application for discharge, u/s 227 of the Cr. P.C.

5. From the impugned order, it appears that the Court below has taken into consideration the materials in the case diary, i.e., the statements of the witnesses, as also the FSL report which showed that in the vomit of the victim lady, the poison was detected. Taking into consideration, these materials, the learned Court below, by the impugned order dated 20.3.2014, rejected the application filed by the petitioners, u/s 227 of the Cr. P.C., finding that it is a fit case, in which the charge is also required to be framed u/s 307 of the Indian Penal Code.

6. The petitioners have brought on record an information derived by them under the Right to Information Act, from the Superintendent of Sadar Hospital, Ranchi. The information that was sought for, was that on 7.5.2002 on Bed No. 4 of the Female ward, one female was admitted, and it may be informed as to when she was discharged, which doctor had issued the injury report, and the copy of the injury report be also made available. In reply thereto, it was informed that according to the available records, on 7.5.2002 at 3.30 PM, one injury report was issued to one Sita Devi (another lady), and thereafter no injury report was issued on that date. This information supplied to the petitioners has been brought on record as Annexure-5 to this application.

7. Learned counsel for the petitioners has submitted that the information supplied to the petitioners by the Superintendent of Sadar Hospital, Ranchi, is an unimpeachable document, which clearly falsifies the entire prosecution case. It is submitted that in exercise of the inherent power u/s 482 of the Cr. P.C., this document must be taken into consideration and the petitioners be discharged. Placing reliance upon the decision of the Apex Court, in *Rajiv Thapar and Others Vs. Madan Lal Kapoor*, , it has been submitted that the High Court is free to consider even the materials that may be produced on behalf of the accused, to

arrive at a just decision, in exercise of the inherent power u/s 482 of the Cr. P.C.

8. In Rajiv Thapar's case (supra), the law has been laid down by the Apex Court as follows:-

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court u/s 482 of the Cr. P.C.

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges leveled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High court should persuade it to quash such criminal proceedings, in exercise of power vested in it u/s 482 of the Cr. P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

Placing reliance on this decision, learned counsel for the petitioners has submitted that the impugned order passed by the Court below cannot be sustained in the eyes of law and this is a fit case in which the accused petitioners be discharged.

9. Learned counsels for the State as also learned counsel for the informant have opposed the prayer, submitting that the Court below has discussed the materials collected during the investigation and has found the prima facie offences for framing the charge against the petitioners under Sections 328, 341, 448 and 34 of the Indian Penal Code, as also u/s 307 of the I.P.C., and there is no illegality in the impugned order. It is also submitted that the petitioners are only adopting the delaying tactics and the trial has unnecessarily been delayed since the year 2002 itself.

10. After having heard learned counsels for both the sides, I find that there is

direct allegation against the petitioners in the FIR to have poisoned the victim-lady on the date of occurrence and the lady was admitted in the Hospital. The FIR clearly shows that her fardbeyan was recorded by the A.S.I. of the Lower Bazar Police Station in the Sadar Hospital at Female Ward at Bed No. 4, wherein the victim-lady, detailed the occurrence to the A.S.I. The impugned order clearly shows that the poison was detected in the vomit of the victim-lady. Further I find from the impugned order that the witnesses whose statements were recorded during investigation, have fully supported the prosecution case and the order dated 16.7.2008 passed by this Court in Cr. M.P. No. 1265 of 2004, clearly shows that the I.O. and the officer-in-charge had concluded that the offence under Sections 328, 341, 448 and 34 of the Indian Penal Code were made out against the petitioners, but only being influenced by the supervision note of the Deputy Superintendent of Police, Ranchi, the final form was submitted in the Court below, which was not accepted and the cognizance was taken against the petitioners.

11. In this backdrop, when the information received by the petitioners under the Right to Information Act is considered, prima facie the very recording of the fardbeyan by the A.S.I., shall become doubtful, if this document is taken to be the certificate, certifying that the lady was not admitted and treated in the hospital. However, Annexure 5 clearly shows that this document cannot be taken into consideration, as this is an absolutely misleading document. The information that was sought for, was that on 7.5.2002 on Bed No. 4 of the Female ward, one female was admitted, and it may be informed as to when she was discharged, which doctor had issued the injury report, and the copy of the injury report be also made available. However, in reply thereto, it was only informed that according to the available records, on 7.5.2002 at 3.30 PM, one injury report was issued to one Sita Devi (another lady) and thereafter no injury report was issued on that date. This clearly shows that there is nothing in this document to show that the victim lady of this case was not admitted in the hospital and treated. Even the fardbeyan of the lady was recorded on 8.5.2002 and it is apparent that the injury report, if any, must have been issued later, or if there was no apparent injury on the patient, the injury report might not have even been issued. In my considered view, this document is a completely misleading document and cannot be taken into consideration at all.

12. In view of the aforementioned discussions, I do not find any illegality and/or irregularity in the impugned order passed by the learned Court below, dismissing the application filed u/s 227 of the Cr. P.C., and also finding that there are sufficient materials against the accused persons for framing the charge u/s 307 of the Indian Penal Code. There is no merit in this revision application and the same is accordingly, dismissed.

13. I.A. No. 2696 of 2014 has been filed for stay of further proceedings against the petitioners in S.T. Case No. 69 of 2014, which also stands dismissed.

14. From the record I also find that the matter has been unnecessarily delayed

by the petitioners by filing one or the other frivolous applications. The Court below is directed to proceed with the trial expeditiously and to dispose of the same without giving any unnecessary adjournments.